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January 30, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: *Ex Parte – In the Matter of Mitigation of Orbital Debris,*
IB Docket No. 02-54

Dear Ms. Dortch:

EchoStar Satellite L.L.C. (“EchoStar”) provides this written *ex parte* presentation to supplement the Commission’s record in the above-referenced proceeding concerning proposed regulations for post-mission disposal of satellites. EchoStar is a Direct Broadcast Satellite (“DBS”) service provider with eight satellites currently in orbit and more than 9 million customers, as well as one operational satellite in the Fixed-Satellite Service (“FSS”). EchoStar has billions of dollars invested in its operational as well as its planned future satellites. Thus, EchoStar, like other satellite companies, believes that it is in its commercial self-interest to have disposal plans in place that minimize the possibility that post-mission satellites threaten EchoStar’s investment by becoming sources of orbital debris.

EchoStar’s disposal plans to date accordingly have included provisions for maneuvering satellites to a storage orbit 150 km above the normal operational orbit at the end of each satellite’s operational life, using a maneuver strategy that reduces the risk of leaving any of its spacecraft near an operational orbit regime. In addition, after each spacecraft has reached its final disposal orbit, all on-board sources of stored energy will be depleted or safely secured.

Because it has already adopted this conservative approach to disposal, as have many other operators, EchoStar agrees with other commenters in this proceeding that Commission-mandated disposal procedures are not necessary. However, should the Commission decide to impose a disposal mandate, such as a requirement for disposal at an orbit more than 150 km above the geosynchronous

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operational orbit, the Commission should apply the requirement prospectively and “grandfather” satellites in orbit as of the effective date of such a rule.

Grandfathering of these satellites is appropriate because satellites currently in orbit (and those currently under construction) were generally designed with enough fuel for movement to storage orbits safely above operational orbits, but below that proposed by the Commission in this proceeding.¹ For example, in order for EchoStar’s satellites to be de-orbited at the higher proposed altitude, approximately four months of service life must be sacrificed to have sufficient fuel to reach the higher altitude, a significant reduction in the satellites’ productivity and ability to serve consumers. Nor would it be appropriate to justify retroactive application of a higher disposal orbit rule because operators have been “on notice” of the possibility of such a requirement. If such notice were enough, then all new rules promulgated by the Commission could be automatically applied retroactively to the date of the notice of proposed rulemaking, on the theory that the Commission’s proposals put the regulated parties on notice of the possibility that they may be adopted. Such retroactive application of a rule based on the idea of “notice” does not comport with the courts’ retroactivity precedent. *See generally Bowen v. Georgetown University Hosp.*, 488 U.S. 204 (1988).

As noted, the loss of service life from retroactive application of the proposed new rule applies as well to satellites that are already under construction, as the fuel budgets of these satellites do not take into account the new requirement. At a minimum, however, EchoStar respectfully requests that the Commission establish a bright line protecting satellites in orbit at the effective date of the rule from a shortening of their useful life.

Respectfully submitted,



Pantelis Michalopoulos
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¹ *In the Matter of Mitigation of Orbital Debris*, Notice of Proposed Rulemaking, 17 FCC Rcd. 5586 (2002), at ¶ 54 (seeking comment on alternative proposals of requiring a storage orbit approximately 300 km above geosynchronous altitude or an even more conservative standard such as that adopted by the Inter-Agency Space Debris Coordination Committee (“IADC”)).

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cc: Mr. Sam Feder, Office of Commissioner Martin
Ms. Jennifer Manner, Office of Commissioner Abernathy
Mr. Paul Margie, Office of Commissioner Copps
Mr. Barry Ohlson, Office of Commissioner Adelstein
Ms. Sheryl Wilkerson, Office of Chairman Powell